

No. 16060 ✓

United States
Court of Appeals
for the Ninth Circuit

FRED JAY RUDMANN, doing business as Constructors of Hawaii, bankrupt, Appellant,

VS.

ALFRED E. LINCZER, Trustee in Bankruptcy of the Estate of Fred Jay Rudmann, doing business as Constructors of Hawaii, Bankrupt, Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii

FILED

SEP 3 - 1958

PAUL P. O'BRIEN, CLERK

No. 16060

United States
Court of Appeals
for the Ninth Circuit

FRED JAY RUDMANN, doing business as Constructors of Hawaii, bankrupt, Appellant,

vs.

ALFRED E. LINCZER, Trustee in Bankruptcy of the Estate of Fred Jay Rudmann, doing business as Constructors of Hawaii, Bankrupt, Appellee.

Transcript of Record

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

| | |
|---|----|
| Adoption of Statement of Points and Designation of Record (USCA)..... | 27 |
| Appeal: | |
| Adoption of Statement of Points and Designation of Record on (USCA)..... | 27 |
| Bond for Costs on..... | 20 |
| Certificate of Clerk to Transcript of Record on | 25 |
| Designation of Record and Statement of Points on (DC)..... | 22 |
| Notice of | 19 |
| Order Extending Time for Filing Record and Docketing | 24 |
| Petition for Review and Stay Pending..... | 10 |
| Bond for Costs on Appeal..... | 20 |
| Certificate of Clerk to Transcript of Record... | 25 |
| Certificate of Referee on Petition for Review of Order Made by Referee..... | 13 |
| Designation of Record (DC)..... | 22 |

ii.

| | |
|---|----|
| Names and Addresses of Attorneys..... | 1 |
| Notice of Appeal..... | 19 |
| Objection by Creditor to Trustee's Determina- tion of Status of Real Property..... | 8 |
| Order Confirming Order of Referee and Dis- missing Petition for Review..... | 18 |
| Order Extending Time for Filing Record and Docketing Appeal | 24 |
| Order Sustaining Objection of Creditor..... | 9 |
| Petition for Review and Stay Pending Appeal | 10 |
| Statement of Points and Designation of Rec- ord (DC) | 22 |
| Adoption of (USCA)..... | 27 |
| Trustee's Report on Exempt Property..... | 3 |

NAMES AND ADDRESSES OF ATTORNEYS

KENNETH E. YOUNG,
606 Trustco Building,
250 South King St.,
Honolulu, T. H.

For the Bankrupt, Fred Jay Rudmann,
dba Constructors of Hawaii.

HODDICK & CHANG,
HOWARD K. HODDICK,
318 Damon Building,
Honolulu, Hawaii.

For the Trustee in Bankruptcy, Alfred E.
Linczer.

FRANCIS I. TSUZUKI,
Room 8, Merchant's Building,
205 Merchant St.,
Honolulu, T. H.

For the Creditor, Standard Plumbing Co.,
Ltd.

In the United States District Court, in and for
The Territory of Hawaii

Bankruptcy No. 3665

In the Matter of

FRED J. RUDMANN, dba CONSTRUCTORS
OF HAWAII, Bankrupt.

TRUSTEE'S REPORT ON EXEMPT
PROPERTY

Comes now Alfred E. Linczer, duly appointed and qualified trustee of the above entitled bankrupt estate and herewith submits his report on the property claimed as exempt by the bankrupt in the schedules annexed to his petition.

1) The trustee requested his attorney Howard K. Hoddick to examine into the subject of whether the property claimed as exempt by the bankrupt is in fact exempt and his attorney has advised him as follows:

a) That the real property is not "exempt" in that it does not come within any Territorial or Federal law defining it as exempt property but that said property does not constitute an asset of the bankrupt estate;

b) That the automobile is not exempt property and that the trustee as such has a one-half interest in the said automobile.

Attached to this report is a letter received by the

trustee from his attorney setting forth the reasons for his conclusions.

Dated at Honolulu, T. H. this 15th day of September, 1956.

/s/ ALFRED E. LINCZER.

[Letterhead of Howard K. Hoddick.]

September 12, 1956

Mr. Alfred E. Linczer, Trustee in Bankruptcy
of the Estate of Fred J. Rudmann, dba
Constructors of Hawaii
Honolulu, T. H.

Dear Mr. Linczer:

You have asked me to examine into the question of whether the properties claimed as exempt by the above named bankrupt are in fact exempt.

With reference to the real property, this was conveyed to the bankrupt and his wife "as joint tenants with full rights of survivorship and not as tenants in common, their assigns and the heirs and assigns of the survivor of them" in 1945. The original deed is recorded in Liber 1875 at Page 113 and is in the possession of the Bank of Hawaii, Main Branch.

At the first meeting of creditors the Court directed the attention of the undersigned to the case of *Mangus v. Miller*, 317 U. S. 178 (1942). In that case, the property had been conveyed to the bankrupt and to another as joint tenants. The Court found that under the Utah law, the interest of one

of the joint tenants was subject to execution and separate sale and could be alienated. This being the law in Utah, the Court ruled as follows:

“When so locally recognized, the interest of a joint tenant is a property interest subject to the jurisdiction of the bankruptcy court under §70 of the general Bankruptcy Act, 11 USC §110”.

The Court further stated:

“It is enough that one joint tenant is authorized to file his petition under §75 and subject his interest to the jurisdiction of the Bankruptcy Court just as he may under §70 of the Bankruptcy Act.” (Emphasis supplied).

A discussion of what interest, if any, the trustee has in property held by the bankrupt with another as tenants by the entirety is contained in *Colliers* Vol. 4, Paragraph 70.17, Pages 1034-1041. In brief it is the position of the editor that if the interest of the bankrupt in the property held either as a tenant by the entirety or as a joint tenant with full right of survivorship may not be encumbered or otherwise alienated without the consensus of the other tenant or tenants that then the bankrupt does not have an interest which the trustee can reach and apply. A good discussion of the reason for this rule is set forth in *McMullen v. Zabowski et ux*, 49 ABR 357. This case involves a petition of the trustee to set aside a “fraudulent” conveyance to a bankrupt husband and his wife as tenants by the entirety. The Court had this to say on the general proposition:

“Defendants invoke the familiar rule that

neither of the owner of property held by them as tenants by the entirety has a separate interest therein, which can be disposed of by either one of such tenants or seized by his creditors or pass to his trustee in bankruptcy. (Citations omitted). This result does not, as defendants appear to suppose, arise from any theory or rule of exemption, as property held by the entireties is often, as here, not 'exempt' in any true legal sense of, as is, for example, a homestead; but the title itself to the property held by such an estate is not capable of division into separate interests, undivided or otherwise, but in one 'entirety', entirely owned by each tenant. There is, therefore, in such a tenancy, no title owned by one of such tenants, and no 'property which prior to the filing of the petition he could by any means have transferred, or which might have been levied and sold under judicial process against him,' and consequently no interest therein which is vested 'by operation of law,' in the trustee under §70(a)(5) of the Bankruptcy Act."

It appears to be well established law in Hawaii that property granted to a husband and wife as joint tenants with full rights of survivorship vest in them an estate by the entirety. *Paahana v. Bila*, 3 Haw. 725 (1876); *Kenway v. Notely*, 5 Haw. 123; *Wailehua v. Lio*, 5 Haw. 519 (1886); *Kuanalewa v. Kipi*, 7 Haw. 575 (1889); *Robinson v. Aheong*, 13 Haw. 196 (1900).

In the Paahana case which involved a grant to a husband and to his wife, the Court said:

“They are not properly joint tenants of such lands, since, though there is a right of survivorship neither can convey so as to defeat this right in the other. Each takes an entirety of the estate.”

In the Robinson case, there was a devise by will to Kaahinu and to two grandchildren, the two grandchildren happening to be husband and wife. As to the interest of the two grandchildren, Kaahinu having predeceased the testator, the Court stated:

“It is agreed that these (the two grandchildren) being husband and wife, took neither as tenants in common, nor as joint tenants, but by the entirety.”

Accordingly, it is my conclusion that under Hawaiian law, the bankrupt had no interest in the real property which he could encumber or alienate and that, therefore, both he and his wife hold an entirety of the estate and that the property is not subject to the jurisdiction of the bankruptcy court.

With reference to the automobile, the rule as to the holding of property as tenants by the entirety appears to be limited to real property or interest therein. The L. O. C. on file with the City and County Treasurer's Office reflects the following: “Registered Owner: Fred J. Rudmann and Mae Rudmann”. Under these circumstances, I believe

that the trustee is entitled to one-half of its value, whatever that may be.

Very truly yours,

/s/ HOWARD K. HODDICK,

Howard K. Hoddick.

HKH:hm

Received 9/15/56. Referee in Bankruptcy.

[Title of District Court and Cause.]

OBJECTION BY CREDITOR TO TRUSTEE'S
DETERMINATION OF STATUS OF REAL
PROPERTY

To The Honorable Ronald B. Jamieson, Referee
In Bankruptcy:

Standard Plumbing Company, Ltd., a Hawaiian corporation, of Honolulu, City and County of Honolulu, a creditor of the estate of the above named bankrupt, by its attorneys Ralph S. Inouye and Francis I. Tsuzuki, objects to the determination by the trustee that the real property described in Schedule B-1 and B-5 of the above named bankrupt's petition is not includible in the estate or assets of said bankrupt, and specifies the following ground of objection:

Said real property held in joint tenancy by bankrupt and his wife is subject to the jurisdiction of the Bankruptcy Court, and the non-exempt portion of the interest passes to the trustee, and be-

comes part of the assets available to the claims of the creditors.

Wherefore, your objector prays that this Court determine that said bankrupt is not entitled to exclude from his assets the said real property interest, and that the trustee be required to designate the same and set aside for the benefit of creditors the non-exempt portion of said interest; and that your objector have such other and further relief as is just.

RALPH S. INOUE and

FRANCIS I. TSUZUKI,

/s/ By FRANCIS I. TSUZUKI,

Attorneys for Standard Plumbing Company, Ltd.

[Endorsed]: Filed October 10, 1956.

[Title of District Court and Cause.]

ORDER SUSTAINING OBJECTION OF CREDITOR

Pursuant to the Decision filed herein on April 9, 1957, it is hereby Ordered that the Objection by Creditor to Trustee's Determination of Status of Real Property filed herein on October 10, 1956, is hereby sustained; that said Bankrupt is not entitled to exclude from his assets his interest as a joint tenant with his wife in the real property described in Schedule B-1 and B-5; that the Trustee herein shall designate and set aside said real

property interest for the benefit of creditors herein; that said interest in real property is now held by said Trustee as tenant in common with the said Bankrupt's wife; that the Trustee shall have said real property appraised and shall take other appropriate steps to realize proceeds by sale, partition or otherwise of the said real property interest for the benefit of the creditors herein, subject to the approval of the Court.

Dated: Honolulu, Hawaii, this 31st day of May, 1957.

/s/ RONALD B. JAMIESON,
Referee in Bankruptcy.

[Endorsed]: Filed May 31, 1957.

[Title of District Court and Cause.]

PETITION FOR REVIEW AND
STAY PENDING REVIEW

That Fred Jay Rudmann, the Bankrupt in the above entitled matter, being aggrieved by the Order of the Referee sustaining the objections to the Trustees' determination of status of Real Property filed by the Standard Plumbing Company, Limited, entered and filed herein on the 31st day of May, 1957, pursuant to the decision of the Referee filed on April 9, 1957, herewith respectfully petitions for review of such order by a District Judge as provided for in Section 39 (c) of the Bankruptcy Act.

The Referee erred in entering and filing said Order sustaining the objection filed herein by the Standard Plumbing Company, Limited, for the following reasons:

(1) In finding, ruling and ordering that as a matter of law the deed to the Bankrupt and his wife made the Bankrupt and his wife joint tenants and not tenants by the entirety of the real property described in the deed, and that the Bankrupt is not entitled to exclude from his assets his interest as a joint tenant with his wife in the real property described in Schedule B-1 and B-5.

(2) In finding, ruling and ordering that the Bankrupt's estate and the Bankrupt's wife hold said real property as tenants in common and that the interest held by the Trustee is subject to the claims of the creditors of the Bankrupt, and that the Trustee set aside said real property interest of the Bankrupt for the benefit of creditors.

(3) In finding, ruling and ordering that the real property described in the deed to the Bankrupt and his wife is an asset of the Bankrupt's estate and thus subject to the claims of the Bankrupt's creditors.

That petitioner believes said order is erroneous for the reasons above and he has not filed this petition for the purpose of delay.

Wherefore, Petitioner prays: (1) that your Honor certify to the Judge of this Court and transmit to the Clerk the record in said proceedings having to do with or in any manner bearing upon

the Order aforesaid, as provided in Section 39 (c) of the Bankruptcy Act; (2) that your Honor enter an order staying the execution and enforcement of the Order to be reviewed upon such terms as will protect the rights of all parties.

Dated: Honolulu, Hawaii, this 7th day of June, 1957.

FRED JAY RUDMANN,
Bankrupt.

/s/ By KENNETH E. YOUNG,
His Attorney.

Territory of Hawaii,
City and County of Honolulu—ss.

I, Fred Jay Rudmann, named in the foregoing Petition for Review, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Dated: Honolulu, Hawaii, this 7th day of June, 1957.

/s/ FRED JAY RUDMANN.

Subscribed and sworn to before me this 7th day of June, 1957.

[Seal] /s/ CAROL F. YOUNG,
Notary Public, First Judicial Circuit, Territory
of Hawaii. My Commission expires: 3/18/61.

Certificate of Service Attached.

[Endorsed]: Filed June 6, 1957.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW OF ORDER MADE BY
REFEREE

The above-named Bankrupt having filed his Petition for Review by a Judge of the Order Sustaining Objection of Creditor made and filed herein by the undersigned Referee on May 31, 1957, the undersigned Referee hereby certifies the attached record of (1) a statement of the questions presented, (2) the findings and orders thereon, (3) the petition for review, (4) a summary of the evidence, and (5) all exhibits as follows:

Statement of the Questions Presented

The questions presented for review are whether the real property referred to in Schedule B-1 of the Bankrupt's Petition filed herein on August 6, 1956, is, to any extent a part of the estate of said Bankrupt.

Findings and Orders Thereon

The Referee made the following findings of fact in his Decision filed herein on April 9, 1957:

"There is no question as to facts in this matter. The only question is the legal effect of the deed dated March 1, 1945, recorded in Book 1875, page 113, in the Bureau of Conveyances of the Territory of Hawaii.

"The real property which is the subject of said Objection was in March, 1945, conveyed by that deed to the Bankrupt and his wife 'as Joint Ten-

ants with full right of survivorship, and not as tenants in common, their assigns, and the heirs and assigns of the survivor of them.' At the time of the conveyance and ever since that time the Bankrupt and his said wife have been married to each other. The deed names the Bankrupt and his wife and describes them as husband and wife."

In reference to the above-mentioned findings of fact, the Referee made in his said Decision the following conclusion of law:

"As a matter of law, the above-mentioned deed to the Bankrupt and his wife made them joint tenants and not tenants by the entirety of the real property described in the deed, with the result that the Trustee of the Bankrupt's estate and the Bankrupt's wife hold said real property as tenants in common and that the interest held by the Trustee is subject to the claims of the creditors of the Bankrupt."

Pursuant to his Decision stating: "An appropriate order will be signed upon presentation sustaining the Objection filed herein by Standard Plumbing Company, Limited, and making available for the claims of the creditors of the Bankrupt the interest in said real property now held by the Trustee," the Referee on May 31, 1957, made and entered the following Order Sustaining Objection of Creditor:

"Pursuant to the Decision filed herein on April 9, 1957, it is hereby Ordered that the Objection by Creditor to Trustee's Determination of Status of Real Property filed herein on October 10, 1956, is

hereby sustained; that said Bankrupt is not entitled to exclude from his assets his interest as a joint tenant with his wife in the real property described in Schedule B-1 and B-5; that the Trustee herein shall designate and set aside said real property interest for the benefit of creditors herein; that said interest in real property is now held by said Trustee as tenant in common with the said Bankrupt's wife; that the Trustee shall have said real property appraised and shall take other appropriate steps to realize proceeds by sale, partition or otherwise of the said real property interest for the benefit of the creditors herein, subject to the approval of the Court."

The above-mentioned Decision and Order are on file in the above-entitled Court and cause in the office of the Clerk of said Court, having been filed therein on respectively April 9, 1957, and May 31, 1957, and are hereby incorporated herein by this reference.

The Petition for Review

The Petition for Review was filed in the above-entitled Court and cause in the office of the Clerk of said Court on June 6, 1957.

Summary of the Evidence

Because of lack of a Court Reporter no transcription was made of any part of the hearing on November 23, 1956, of the Objection by Creditors to Trustee's Determination of Status of Real Property filed herein on October 6, 1956, by Standard

Plumbing Company, Limited, a creditor of the Bankrupt. The Objection stated as follows:

“Standard Plumbing Company, Ltd., a Hawaiian corporation, of Honolulu, City and County of Honolulu, a creditor of the estate of the above named bankrupt, by its attorneys Ralph S. Inouye and Francis I. Tsuzuki, objects to the determination by the trustee that the real property described in Schedule B-1 and B-5 of the above named bankrupt’s petition is not includible in the estate or assets of said bankrupt, and specifies the following ground of objection:

“Said real property held in joint tenancy by bankrupt and his wife is subject to the jurisdiction of the Bankruptcy Court, and the non-exempt portion of the interest passes to the trustee, and becomes part of the assets available to the claims of the creditors.

“Wherefore, your objector prays that this Court determine that said bankrupt is not entitled to exclude from his assets the said real property interest, and that the trustee be required to designate the same and set aside for the benefit of creditors the non-exempt portion of said interest; and that your objector have such other and further relief as is just.”

Said Objection by Creditor to Trustee’s Determination of Status of Real Property is on file in the above-entitled Court and cause in the office of the Clerk of said Court, having been filed therein

on October 10, 1956, and is hereby incorporated herein by this reference.

At the hearing no evidence was introduced; but Ralph S. Inouye and Francis I. Tsuzuki, attorneys for Standard Plumbing Company, Limited, the objecting creditor, and Kenneth E. Young, attorney for the Bankrupt, were present and agreed to the relevant facts and stated them to be as found by the Referee in his Decision (see the Referee's findings of fact as above quoted in this Certificate). The Trustee and his attorney had notice of the hearing but did not appear at the hearing. The attorneys for the objecting creditor and the Bankrupt were in agreement that the Trustee had determined that he did not have title or right to the said real property or any part of it, on the theory that said real property was held by the Bankrupt and the Bankrupt's wife as tenants by the entirety.

The Exhibits

There being no evidence submitted at the hearing, there were no exhibits at the hearing filed or received in evidence at the hearing.

Dated: Honolulu, Hawaii, June 19, 1957.

/s/ RONALD B. JAMIESON,
Referee in Bankruptcy.

[Endorsed]: Filed June 25, 1957.

In The United States District Court
For The District of Hawaii

Bankruptcy No. 3665

In the Matter of

FRED J. RUDMANN, dba CONSTRUCTORS
OF HAWAII, Bankrupt.

ORDER

The Petition of the bankrupt for review filed herein on June 6, 1957, of an order entered by the referee in bankruptcy on May 31, 1957, that the bankrupt is not entitled to exclude from his assets his interest as a joint tenant with his wife in the real property described in Schedules B-1 and B-5 attached to his voluntary petition in bankruptcy, having come on for hearing before this Court on February 5, 1958, and there being present: the bankrupt, together with his counsel, Kenneth E. Young, Howard K. Hoddick, the attorney for the trustee, and Francis I. Tsuzuki, attorney for Standard Plumbing Company, Ltd., a Hawaiian corporation, and a creditor of the bankrupt estate, and the trustee through his counsel, having urged that the referee's order be confirmed and arguments having been presented, and this Court being fully advised in the premises,

It Is Hereby Ordered, Adjudged, and Decreed that the said Order of the Referee be and is confirmed and the Petition of the bankrupt for review of said order be and is dismissed.

Dated at Honolulu, T. H., this 10th day of February, 1958.

/s/ BEN HARRISON,
Judge, U. S. District Court.

Approved as to form:

/s/ KENNETH E. YOUNG,
Attorney for Bankrupt.

/s/ FRANCIS I. TSUZUKI,
Attorney for Standard Plumbing Co.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Fred Jay Rudmann, dba Constructors of Hawaii, the above named bankrupt, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final order entered herein on the 10th day of February, 1958 confirming the Order of the Referee entered herein on May 31, 1957.

Dated: Honolulu, Hawaii, this 21st day of March, 1958.

/s/ KENNETH E. YOUNG,
Attorney for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 21, 1958.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas, a final order was entered in the above entitled action on the 10th day of February, 1958, in the United States District Court for the District of Hawaii, against the Appellant, Fred Jay Rudmann, dba Constructors of Hawaii, bankrupt; and

Whereas, the Appellant, Fred Jay Rudmann, dba Constructors of Hawaii, bankrupt, feeling aggrieved thereby has prosecuted his appeal to the United States Court of Appeals for the Ninth Circuit.

Now, Therefore, the Pacific Insurance Company, Limited, having an office and usual place of business at 198 South King Street, City and County of Honolulu, Territory of Hawaii, hereby undertakes in the sum of Two Hundred Fifty (\$250.00) Dollars, that if the final order dated February 10, 1958 so appealed from is affirmed or the appeal is dismissed, the Appellant, Fred Jay Rudmann, dba Constructors of Hawaii, bankrupt, shall pay to the Trustee in bankruptcy of the bankrupt estate of Fred Jay Rudmann, dba Constructors of Hawaii, bankrupt, all costs awarded against him on said appeal, or such costs as the Appellate Court may award if the final order is modified.

Dated: Honolulu, Hawaii, this 21st day of March, 1958.

[Seal] PACIFIC INSURANCE
 COMPANY, LIMITED,
/s/ By JOHN F. HRON,
 Attorney-in-Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 21st day of March, A.D., 1958, before me appeared John F. Hron, to me personally known, who being by me duly sworn, did say that he is the Attorney in Fact of the Pacific Insurance Company, Limited, duly appointed under Power of Attorney dated the 24th day of May, 1957, which Power of Attorney is now in full force and effect, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said John F. Hron acknowledged said instrument to be the free act and deed of said corporation.

[Seal]. /s/ BETTY H. HASHIMOTO,
Notary Public, First Judicial Circuit, Territory
of Hawaii. My Commission Expires January
21, 1962.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 21, 1958.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF POINTS

Pursuant to Rule 75(a) of the Rules of Civil Procedure, Fred Jay Rudmann, dba Constructors of Hawaii, Appellant, hereby designates the following portions of the record, proceedings and evidence to be contained in the record on his appeal from the final Order and Judgment entered herein on February 10, 1958:

1. Trustee's Report on Exempt Property.
2. Objection by Creditor to Trustee's Determination of Status of Real Property.
3. Order of the Referee in Bankruptcy dated May 31, 1957.
4. Petition for Review and Stay Pending Review.
5. Referee's Certificate on Petition for Review of Order made by Referee.
6. Order of Judge Ben Harrison, United States District Court, dated February 10, 1958.
7. Notice of Appeal.
8. Bond for Costs on Appeal.
9. Statement of Points on which Appellant intends to rely, served herewith.
10. This designation.

Statement of Points

Pursuant to Rule 75(d) of the Rules of Civil Procedure, Fred Jay Rudmann, dba Constructors

of Hawaii, Appellant, hereby states the points on which he intends to rely on his appeal from the final Order and Judgment entered herein as follows:

1. That the Judge of the District Court erred in confirming the Order of the Referee dated May 31, 1957.

2. That the Judge of the District Court and the Referee in Bankruptcy erred:

(a) In finding, ruling and ordering that as a matter of law the deed to the Bankrupt (Appellant) and his wife made the Bankrupt (Appellant) and his wife joint tenants and not tenants by the entirety of the real property described in the deed, and that the Bankrupt (Appellant) is not entitled to exclude from his assets his interest as a joint tenant with his wife in the real property described in Schedule B-1 and B-5.

(b) In finding, ruling and ordering that the Bankrupt's (Appellant) estate and the Bankrupt's (Appellant) wife hold said real property as tenants in common and that the interest held by the Trustee is subject to the claims of the creditors of the Bankrupt (Appellant), and that the Trustee set aside said real property interest of the Bankrupt (Appellant) for the benefit of creditors.

(c) In finding, ruling and ordering that the real property described in the deed to the Bankrupt (Appellant) and his wife is an asset of the Bankrupt's estate and thus subject to the claims of the Bankrupt's (Appellant) creditors.

Dated: Honolulu, Hawaii, this 18th day of April, 1958.

/s/ KENNETH E. YOUNG,
Attorney for Appellant (Bankrupt).

Acknowledgment of Service Attached.

[Endorsed]: Filed April 18, 1958.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
APPEAL

On the application of Fred Jay Rudmann, Bankrupt above named, made pursuant to the provisions of Rule 73(g) of the Federal Rules of Civil Procedure,

It Is Hereby Ordered that the Bankrupt may have to and including the 16th day of June, 1958, within which to file the record on appeal and to docket the appeal.

Dated at Honolulu, T.H., this 25th day of April, 1958.

/s/ JON WIIG,
Judge of the Above Entitled
Court.

[Endorsed]: Filed April 25, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 31 consists of a statement of the names and addresses of attorneys of record and of the various original pleadings as hereinbelow listed and indicated:

Trustee's Report on Exempt Property.

Objection by Creditor to Trustee's Determination of Status of Real Property.

Order Sustaining Objection of Creditor.

Petition for Review and Stay Pending Review.

Referee's Certificate on Petition for Review of Order Made by Referee.

Order.

Notice of Appeal.

Bond for Costs on Appeal.

Designation of Record on Appeal and Statement of Points.

Order Extending Time for Filing Record on Appeal and Docketing Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 18th day of June, 1958.

[Seal] WILLIAM F. THOMPSON, JR.
 Clerk,
/s/ By THOS. S. CUMMINS,
 Deputy Clerk.

[Endorsed]: No. 16060. United States Court of Appeals for the Ninth Circuit. Fred Jay Rudmann, doing business as Constructors of Hawaii, bankrupt, Appellant, vs. Alfred E. Linczer, Trustee in Bankruptcy of the Estate of Fred Jay Rudmann, doing business as Constructors of Hawaii, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed: June 20, 1958.

Docketed: June 25, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 16060

FRED J. RUDMANN, dba Constructors of Ha-
wail,

vs.

ALFRED E. LINCZER,

Trustee.

ADOPTION OF STATEMENT OF
POINTS IN TYPED RECORD

Comes now appellant, Fred J. Rudmann and hereby adopts the statement of points on which he intends to rely and the designation of the record on appeal, as set forth and appearing in the typed record filed on April 19, 1958 in the United States District Court for Hawaii.

Dated: July 3, 1958.

/s/ KENNETH E. YOUNG,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 7, 1958. Paul P. O'Brien,
Clerk.

